

Bryan Christopher Castaneda, Esq. State Bar No. 275095
bryanchristophercastaneda@gmail.com
LAW OFFICES OF MICHAEL E. REZNICK
A Professional Corporation
283 Ocho Rios Way
Oak Park, California 91377-5540
Tel: (818) 437-5630 - reznagoura@aol.com

Attorney for Plaintiffs DOE JEWISH USC FACULTY
MEMBER 2004 and DOE JEWISH USC STUDENT
1987, Individually And On Behalf Of All
Others Similarly Situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DOE JEWISH USC FACULTY MEMBER
2004, *et al.*,

Plaintiffs,

v.

UNIVERSITY OF SOUTHERN
CALIFORNIA, *et al.*,

Defendants.

Case No. 2:24-cv-05712-FLA (SSCx)

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO REMAND IMPROPERLY
REMOVED ACTION TO THE LOS
ANGELES SUPERIOR COURT
PURSUANT TO 28 U.S.C. SECTION 1332;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

DATE: September 6, 2024

TIME: 1:30 P.M.

CTRM: 6B, Hon. Fernando L. Aenlle-Rocha

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT on September 6, 2024 at 1:30 p.m. or as soon
thereafter as Counsel may be heard, in Courtroom 6B of this Court, located at 350 West 1st Street,
Los Angeles, California, before the Honorable Fernando L. Aenlle-Rocha, Plaintiffs herein,
individually and on behalf of all others similarly situated ("Plaintiffs") will and hereby do move
the Court for an order remanding this improperly removed home state or local controversy back
to the Los Angeles County Superior Court in which it was filed.

This motion is made pursuant to 28 U.S.C. sections 1332(d) et seq. and this Court's
inherent powers.

1 This motion is based upon this Notice of Motion and Motion, the Memorandum of Points
2 and Authorities, the complete files and records in this action, including this Court's July 12, 2024
3 "Order to Show Cause Why Action Should Not Be Remanded For Lack Of Subject Matter
4 Jurisdiction ("OSC") and Plaintiffs' response in support thereof, including the Declaration of
5 Michael E. Reznick, the argument of counsel, and such other matters as the Court may consider.
6

7 This motion is made following the conference of counsel pursuant to Local Rule 7-3,
8 which took place immediately after service of the Court's OSC. The conference was conducted
9 via phone with follow-up emails that gave rise to the Stipulation and Order Thereon [Dkt. No.]
10 continuing the Court's Scheduling Conference and Defendant's Motion to Dismiss until after the
11 Court rules on its OSC (and if necessary, the instant Motion) so that the parties and Court can
12 avoid working up the case in federal court if the Court determines that it should be remanded.
13 Needless to say, Plaintiffs will take the instant Motion to Remand off-calendar if the Court
14 remands the action pursuant to its OSC.
15

16
17 DATED: August 6, 2024

LAW OFFICES OF MICHAEL E. REZNICK
A Professional Corporation

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19
20 By: /s/Bryan Christopher Castaneda
Bryan Christopher Castaneda

21 Attorney for Plaintiffs DOE JEWISH USC
22 FACULTY MEMBER 2004 and DOE JEWISH
23 USC STUDENT 1987, Individually And On Behalf
24 Of All Others Similarly Situated
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1 **I. DEFENDANT CANNOT ESTABLISH CAFA JURISDICTION**

2 Plaintiff DOE JEWISH USC FACULTY MEMBER 2004 (“Jewish Professor”)
3 filed the initial Complaint in this case May 15, 2024. The Complaint was filed on Jewish
4 Professor’s individual behalf and on behalf of all others similarly situated, asserting only
5 California state law claims on behalf of the Plaintiff and putative class.
6

7 Plaintiff DOE JEWISH STUDENT 1987 (“Jewish Student”) was subsequently
8 named in the operative (removed) First Amended Complaint (“FAC”) that was filed in the Los
9 Angeles County Superior Court on June 7, 2024. Jewish Student also asserts only California state
10 law claims, raising no federal issue beyond CAFA.

11 The FAC (and initial pleading) is between parties who are citizens of the State of
12 California, including a California, Los Angeles based Defendant – the University of Southern
13 *California* (“USC”) - and a long-term Jewish USC faculty member Plaintiff and other similarly
14 situated USC faculty members who are also employed by Defendant. (Additional Jewish Faculty
15 class members (if any) would be comprised of other Jewish employees harmed or damaged by
16 USC’s alleged misconduct, all of whom are presumably citizens of the State of California) (see
17 FAC at 10:15) (“a Jewish Professor employed by and at USC”) (“who suffered damages and
18 harm as a result of Defendant University’s conduct”). (FAC at 17:24-25).
19

20 Similarly, the FAC asserts *only California state-law claims* against a California
21 Defendant by a full-time California Jewish USC student Plaintiff, individually and on behalf of
22 all others similarly situated. The FAC does not assert claims on behalf of *all* Jewish USC
23 students but rather “[Students] (sic) who suffered damages and harm as a result of Defendant
24 University’s conduct.” (FAC at 17:28-18:2).
25

26 While the gainfully employed Jewish Professor’s California residency (and in turn
27 “citizenship”) can be inferred from the face of the FAC absent extrinsic facts to the contrary, the
28

1 Court can also infer the same conclusion with respect to the Jewish Student based upon the
2 allegations in the FAC. The fact that Jewish Student allegedly commutes to USC's campus "for
3 several consecutive days" [from] 8am to 10pm for 7-8 days, in class, studying, and practicing
4 skills with classmates" (FAC at 13:26-28) raises the reasonable inference that Jewish Student is
5 also a resident or "citizen" of the State of California. (See, e.g., California Vehicle Code section
6 516) (You are considered a "resident" of California if you are present in this state for six months
7 or longer within a 12-month period and you are not visiting on a transient or temporary basis).
8 See also dmv.gov for other factors and indicia of "residency," such as California employment and
9 voter registration rolls).¹

11 Moreover, as Plaintiffs demonstrate in their brief in support of the Court's OSC,
12 not *all* Jewish USC Faculty Members nor *all* Jewish USC Students are potential members of the
13 proposed subclasses. (See previously filed Declaration of Michael E. Reznick in Support of
14 Court's OSC).

16 CAFA does not "alter the longstanding rule that the party seeking federal
17 jurisdiction on removal [USC in this case] bears the burden of establishing that jurisdiction." See
18 *Abrego Abrego v. Dow Chem Co.* (9th Cir. 2006) 443 F. 3d 676, 686.

19 As this Court noted in its OSC, the main battleground for a remand in this case
20 stems from the Court's *sua sponte* observation and contention that this case will not exceed the \$5
21 million threshold required by CAFA.

23 USC has not plausibly demonstrated that it does.

24 While there is no presumption against removal when CAFA jurisdiction is alleged,

26 ¹ Plaintiffs are not suggesting that the answer to determining the parties' citizenship
27 lies in an exhaustive review of their DMV or voting records but only use the DMV regulations to
28 point out the flaws in Defendant's reasoning that an applicant identifying his or her "citizenship"
at the time of applying for employment or to attend an out of state school has nothing to do with
his or her citizenship at the time of the filing of the FAC.

1 *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014), USC must “plausibly
2 show that it is reasonably possible that the potential liability exceeds \$5 million.” *Green v.*
3 *Harley-Davidson, Inc.*, 965 F. 3d 767, 772 (9th Cir. 2020).

4
5 Moreover, a defendant need not prove the jurisdictional amount with certainty, or
6 make out the plaintiff’s case for her. *Id.* (citing *Harris v. KM Indus., Inc.*, 980 F.3d 694, 701 (9th
7 Cir. 2020)). Nor does the Court need to perform a detailed mathematical analysis to determine
8 whether a defendant’s showing is adequate. “Rather, ‘a defendant may rely on reasonable
9 assumptions to prove that it has met the statutory threshold,’ and on a ‘chain of reasoning that
10 includes assumptions’ based on reasonable grounds.” *Harris*, 980 F.3d at 701. Reasonable
11 grounds may be established on the basis of the complaint and extrinsic evidence. *Id.*
12 “[P]rospective attorney’s fees must [also] be included in the assessment of the amount in
13 controversy.” *Id.* (quoting *Arias*, 936 F.3d at 922).

14
15 On the other hand, a plaintiff is not required to introduce extrinsic evidence to contest the
16 defendant’s estimates. He or she may rely entirely on “‘a reasoned argument as to why any
17 assumptions on which [defendant’s numbers] are based are not supported by evidence.’” *Harris*,
18 930 F. 3d at 700.

19
20 In this case, Plaintiffs have done so with but one exception (namely, the composition of
21 the two subclasses). Plaintiffs have negated or called into question Defendant’s speculative
22 estimates based on nothing more than “junk” evidence and rank hearsay. In both cases, USC’s
23 showing in its Opposition to the Court’s OSC falls well short of demonstrating that the amount in
24 controversy exceeds \$5 million exclusive of interest and costs, that there is even “minimal
25 diversity” in this case or that the aggregate proposed classes exceed 100 potential members.
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1 A. **The Amount In Controversy Is Substantially Less Than \$5,000,000**

2 USC offers an *estimate* of the CAFA jurisdictional amount, asserting an estimate
3 of \$20 million at stake, including attorney’s fees. This is based on the fact that Plaintiffs filed the
4 state court complaint as an “unlimited” action, meaning they are seeking more than \$25,000 in
5 damages under California Code of Civil Procedure sections 86(a) and 88. From that premise,
6 USC offers, among other things, other jury verdicts from what USC argues are similar claims as
7 the ones asserted by Plaintiffs herein. The verdicts are not only rank hearsay, but totally
8 inapposite civil rights cases that have no bearing on what happened at USC.
9

10 USC also infers from the absence of a stated amount that the FAC seeks to recover
11 at least \$25,000 for each putative class member because it alleges that Jewish Professor’s and
12 Jewish Student’s claims are “typical” of those in the class.
13

14 USC’s assertion as to the amount in controversy is sheer speculation. The FAC
15 alleges nothing from which a reasonable person could infer the same conclusion proffered by
16 USC. In fact, a reasonable person could draw a contrary conclusion. All that the prayer states is
17 that the Plaintiffs are seeking “damages in an amount in excess of the [\$25,000] jurisdictional
18 limits of [the Los Angeles County Superior Court] to be shown at the time of trial in accordance
19 with proof.” (FAC at 26:22-23). The better reading of this statement is that the complaint - as a
20 whole - seeks in excess of \$25,000 - not that each putative class member does so, as USC would
21 have it. There is no authority or basis for bootstrapping the \$25,000 statement into a reasonable
22 estimate of \$20 million.
23

24 USC also offers an alternative estimate based on its valuation of Plaintiffs’ claims
25 for injunctive relief and what the cost of such “far reaching remedies” would cost the parties. In
26 particular, USC, points to its anticipated attorney’s fees to justify its inflated claim. Plaintiffs can
27 just as easily and reasonably assert that USC could remedy each and all of the problems
28

1 complained of by Plaintiffs in the FAC by a phone call, apology, consent decree and postage
2 stamp. The cost to USC: Less than \$1,000.00.

3 The other problem that pervades USC's alternative estimate "is that it assumes
4 unreasonably and untenable high rates of violations. Simply stated, USC posits that every
5 member of the class experienced a violation for every claim.
6

7 As one Court has observed, "there are circumstances in which a 100% violation
8 rate may be a reasonable proposition for CAFA removal purposes. A defendant may adduce facts
9 that plausibly support such a rate, and the complaint itself may allege facts that make a 100%
10 incident rate a reasonable inference." *Moore*, 2021 U.S. Dist. LEXIS 134216, 2021 WL 303577,
11 at *2 (citing *Anderson*, 2020 U.S. Dist. LEXIS 245356, 2020 WL 7779015, at *4).
12

13 But that is not the case here. USC did not offer any "extrinsic evidence" or
14 otherwise independently demonstrate or validate a "100% violation rate." *Id.*

15 While USC points to a few allegations to the effect that it is said to have followed
16 a common course of conduct and intentionally adopted policies and practices, those passing
17 comments do not dilute the complaint's overarching allegations that establishes that what
18 happened in March – June of 2024 was anything but a commonplace event or occurrence.
19

20 This Court has an independent duty to ensure its jurisdiction, whether or not the
21 parties address it. *See* Fed. R. Civ. P. 12(h)(3).

22 Toward that end, while this Court has already issued an OSC re why the amount in
23 controversy, standing alone, does not require remand, which was supported by Plaintiffs' own
24 brief. The instant Motion has been filed in an abundance of caution. Simply stated, USC's
25 assumption that the FAC's allegations exceed the \$5 million CAFA jurisdictional threshold is
26 untenable because it assumes a 100 percent violation rate for each class member. USC's
27 unreasonable assumptions about the rate of violations dooms its estimates, irrespective of the size
28

1 of the putative class.

2 This case was improperly removed under CAFA and should be remanded to the
3 Los Angeles Superior Court.

4 **B. USC Cannot Establish Minimal Diversity Or That The Two Subclasses**
5 **Exceed 100 Members**
6

7 The facial, factual and legal sufficiency of Defendant's showing in this case is
8 woefully short of demonstrating that the proposed classes exceed 100 members or even the
9 "minimal diversity" required for CAFA jurisdiction in this home state controversy.

10 In any case, Defendant cannot establish "minimal diversity" by inferring
11 citizenship of another state or country because some USC students or faculty members chose to
12 identify as "Jewish" when they applied for work or studying at USC. Similarly, it is
13 inappropriate for USC to redefine what the proposed "classes" are in this case by unilaterally
14 expanding the scope of the classes to include "all" USC Jewish Professors and "all" Jewish USC
15 Students.
16

17 **C. The Classes In the Aggregate Are Less Than 100 Members**

18 In the interest of brevity, Plaintiffs request that the Court take judicial notice of its
19 own file and in particular, the previously filed Declaration of Michael E. Reznick in support of
20 the Court's OSC to demonstrate why the classes in this case are less than 100 members.
21

22 **II. REMAND IS REQUIRED UNDER THE "HOME STATE" OR "LOCAL**
23 **CONTROVERSY" EXCEPTION (MANDATORY ABSTENTION)**

24 Even if this Court determines that CAFA jurisdiction is otherwise proper, it should
25 decline to exercise jurisdiction under the "home state" or "local controversy" exception
26 (mandatory abstention).
27

28 In cases removed from state court, a federal court cannot exercise jurisdiction over

1 a ‘minimal diversity’ class action if either:

- 2 - Two thirds or more of the class members (aggregating all proposed
3 plaintiff classes and the primary defendants are citizens of the state in
4 which the action was originally filed; or
- 5 - More than two thirds of the class members and at least one defendant
6 are “citizens” of that state, and
- 7 - The “principal injuries” resulting from the alleged wrongdoing
8 occurred there;
- 9 - Significant relief is being sought from the local defendant whose
10 alleged conduct forms a significant basis for plaintiff’s claims ; and
- 11 - No other class action has been filed within the past three years on
12 behalf of the same persons against any defendant asserting the same or
13 similar factual allegations.

14 (28 USC section 1332(d)(4); *Hart v. FedEx Ground Package System, Inc.* (7th Cir. 2006) 457
15 F. 3d 675, 680; *Benko v. Quality Loan Service Corp.* (9th Cir, 2015) 789 F. 3d 1111, 1118-19.

16 In this case, even if USC could establish “minimal diversity” between some
17 hypothetical class member and the university, it is more reasonable than not to assume that at
18 least two-thirds of the Jewish Professor class members and Jewish Students are in fact residents
19 of the State of California – the same state as USC. Moreover, the “principal injuries” (enabling
20 and encouraging antisemitism and the other wrongs and misconduct alleged in the FAC to the
21 detriment of the Jewish class members who were damaged or harmed by the other wrongs and
22 misconduct) *occurred on the Los Angeles campus of USC*. The injunctive relief and other
23 remedies sought by the local Plaintiffs are from a *local* defendant whose alleged misconduct that
24 occurred *in the City of Los Angeles* forms the basis for Plaintiffs’ claims. Finally, no other class
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1 action has been filed within the past three years on behalf of any of the Plaintiffs against this
2 Defendant.

3 Accordingly, all of the factors exist under the “home state” or “local controversy” doctrine
4 in this action to remand the case to the Los Angeles Superior Court under the mandatory
5 abstention doctrine.
6

7 **III. CONCLUSION**

8 For each and all of the foregoing reasons and for the reasons stated in Plaintiffs’
9 Memorandum in support of this Court’s OSC, Plaintiffs request that the Court remand the case to
10 the Los Angeles County Superior Court.
11

12 DATED: August 6, 2024

LAW OFFICES OF MICHAEL E. REZNICK
A Professional Corporation

13
14
15 By: /s/Bryan Christopher Castaneda
Bryan Christopher Castaneda

16 Attorney for Plaintiffs DOE JEWISH USC
17 FACULTY MEMBER 2004 and DOE JEWISH
18 USC STUDENT 1987, Individually And On Behalf
19 Of All Others Similarly Situated
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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2024, I served the following documents by and through the CM/ECF system all parties of record to this action and interested parties who are registered CM/ECF users, or have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system:

PLAINTIFFS' NOTICE OF MOTION AND MOTION TO REMAND IMPROPERLY REMOVED ACTION TO THE LOS ANGELES SUPERIOR COURT PURSUANT TO 28 U.S.C. SECTION 1332; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

I declare under penalty of perjury under the laws of the State of California and United States of America that the foregoing is true and correct.

Executed on August 6, 2024 at Oak Park, California.

By: /s/Bryan Christopher Castaneda
Bryan Christopher Castaneda